IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9322 of 1993

with

CIVIL APPLICATION No.1897 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

KARAMSIBHAI CHATURBHAI PATEL

Versus

COLLECTOR

Appearance:

1. Special Civil Application No. 9322 of 1993

MR VAISHNAV for MR JF SHAH for Petitioner No. 1

MS MANISHA LAVKUMAR AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 07/04/2004

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution, the petitioner has made a prayer to set aside the order dated 4.5.1992, whereby the subsistence allowance payable to the petitioner was reduced by 50% on the ground that the petitioner had prolonged the departmental enquiry being conducted against him by remaining absent. The reduction in subsistence allowance is ordered to take effect from 1.9.1991 and the claim of the petitioner is restricted to the period from 1.9.1991 to 4.5.1992.

2. It was submitted by learned counsel Mr.Vaishnav that the petitioner had repeatedly protested before the respondent to convey that, during the period of suspension pending enquiry, the petitioner was suffering from financial crisis due to non-payment of subsistence allowance. It was specifically stated in the representations of the petitioner that the petitioner was not in a position to engage an advocate and defend himself in the departmental enquiry on account of non-payment of subsistence allowance. There is no dispute about the fact that the petitioner was suspended on 25.2.1991 with effect from 31.1.1990 and the disputes regarding payment of subsistence allowance were subsisting at the time of making of the impugned order dated 4.5.1992. It also appears from the record that, since August, 1991, the payment of subsistence allowance was withheld on the ground that the petitioner had violated the conditions contained in the suspension order and left the headquarter. As against that, the case of the petitioner is that, without payment of subsistence allowance, he could not carry on the expenses of his household as well as the litigation.

3. Thus, the short issue which arises is whether the period of suspension has been prolonged due to reasons directly attributable to the petitioner. Since, admittedly, the payment of subsistence allowance to the petitioner was withheld on the ground that he had violated the conditions of the suspension order, it cannot be gainsaid that the petitioner was not paid even the regular subsistence allowance payable before the impugned order. In such circumstances, if he could not remain present and co-operate in the departmental enquiry held against him, the delay can be attributed to non-payment of subsistence allowance caused by the respondent. In this context, the learned counsel for the petitioner relied upon the judgment of the Supreme Court in JAGDAMBA PRAPSAD SHUKLA v. STATE OF U.P. [AIR 2000

SC 2806] in support of the submission that, because of financial crunch on account of non-payment of subsistence allowance the employee was unable to appear in enquiry, and such non-payment would amount to clear breach of principles of natural justice on account of denial of reasonable opportunity to the employee to defend himself. It is also held by Constitution Bench of the Supreme Court in GHANSHYAM DAS SHRIVASTAVA v. STATE OF MADHYA PRADESH [AIR 1973 SC 1183] that, where the delinquent had specifically communicated his inability to attend the enquiry due to paucity of funds resulting from non-payment of subsistence allowance, the enquiry would be vitiated for his non-participation. It, therefore, follows that non-payment of subsistence allowance would, in the given facts and circumstances, justify the absence of the delinquent and prolongation of the enquiry in such circumstances cannot be attributed to the delinquent. It would, therefore, also follow that, in the facts and circumstances of this case, the amount of subsistence allowance could not have been reduced in exercise of the powers contained in clause (2) of the proviso to sub-section (1) of Rule 151 of the Bombay Civil Service Rules, 1959. The impugned order, therefore, cannot be sustained and has to be set aside. It was also pointed out by the learned counsel for the petitioner that, after the interim order dated 14.2.1994 of this Court made while admitting the petition, the subsistence allowance payable to the petitioner was in fact increased by 50%.

4. Accordingly, the petition is allowed and the impugned order dated 4.5.1992 at Annexure-G to the petition is set aside, as a consequence of which the petitioner shall be entitled to payment of the subsistence allowance for the period from 1.9.1991 to 4.5.1992 without effecting the reduction ordered by the impugned order. Rule is made absolute accordingly with no order as to costs.

5. In view of the above order, the Civil Application does not survive. It accordingly stands disposed.

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)